IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH POUSHA 1928

WP(C).No. 31157 of 2005(H)

AGAINST THE ORDER IN EP. 75/1999 IN
ARC.45/1998 of SUB COURT, TIRUR

.....

PETITIONER:

ERANHIKKAL JANU, W/O.CHIRAKKAL PARAMBIL
KUMARAN, P.O.PARIYAPURAM, PARIYAPURAM AMSOM
PANANGATTOOR DESOM.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

THE SECRETARY,
THE PARAPPANANGADI REGIONAL HOUSING CO-OPERATIVE
SOCIETY LTD., NO. (M) 38, P.O.PARAPPANANGADI.

BY ADV. SRI.V.RAJENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 10163/06 IN WPC 31157/05

DISMISSED

10/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

APPENDIX:

EXT.P1: COPY OF EP DT.11/10/99

EXT.P2: COPY OF JUDGMENT OF THIS COURT IN WPC 19529/03 DT.12/1/05

EXT.P3: COPY OF EA 242/05 DT.10/9/05

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.31157 OF 2005

Dated 10th January 2007

J U D G M E N T

Petitioner is judgment debtor and respondent the decree holder. When the entire mortgaged property was directed to be sold for realisation of the decree debt, judgment debtor approached this court in W.P.C.19529/2003. This court as per Ext.P2 judgment directed executing court to appoint commission, at the expense of judgment debtor, to find out whether by sale of a portion of the mortgaged property, the decree debt could be satisfied. Commissioner so appointed divided the 10 cents of decree schedule property as two plots. One plot having an extent of 5.07 cents was directed to be sold. Executing court fixed the upset price of that property at Rs.2,50,000/-. Property was proclaimed for sale. But as there was no bidders it could not be sold. Decree holder thereafter filed E.A.242/05 to fix the reserve price so that decree holder could be permitted to bid and set off. Executing court holding

that there was no bidders, directed sale of the entire mortgaged property after fixing reserve price at Rs.3,98,800/-. That order is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner and respondent were heard.

3. Learned counsel appearing for petitioner argued that when by sale of part of the mortgaged property entire decree debt can be satisfied executing court is not to sell the entire property and there was no bidders because upset price was high and executing court may be directed to reduce upset price and sell only the 5.07 cents alone and only if by such sale the entire decree debt could not be realised the balance extent of property need be sold. Learned counsel appearing for respondent pointed out that part of the property was originally put up for sale and there was no bidders and decree holder sought permission to bid and the court fixed the reserve price as decree debt as on the date of sale inclusive of interest and costs and in such circumstances, there is no need to interfere with Ext.P3 order.

4. Executing court originally found that only

portion need be sold for satisfying the decree and there is no necessity to sell the entire mortgaged property. Rule 64 of Order XXI imposes an obligation on the court to sell only that portion of the attached property to satisfy the decree debt. In such circumstance, the order for sale of the whole property on the ground of want of bidders cannot be justified. There is force in the submission of learned counsel appearing for petitioner that want of bidders was due to the higher upset price fixed by executing court. Executing court is therefore directed to reduce the upset price to Rs.2,00,000/- for that part of the property and conduct fresh sale after fresh proclamation. Decree holder is to be permitted to bid, if files an application under Rule 72 A. In that case whole mortgaged property is not directed to be sold and only half of the property is to be sold executing court is to fix half of the reserve price, that would be fixed if the whole property is to be sold.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.